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Attorney Docket No. P64053US0

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1761

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Brigitte FALCONNIER

Application No.: 09/423,665

Art Unit: 1761

Filed: November 22, 1999

Examiner: Curtis Edward SHERRER

For: NOVEL CLEAR BEVERAGE OPTIONALLY ALCOHOLIC CONTAINING ANETHOL  
AND CLOUDY DILUTED BEVERAGE OBTAINED BY DILUTION

**REQUEST TO WITHDRAW IMPROPER FINAL  
REJECTION ON FIRST ACTION [MPEP 706.07(b)] AND  
TO ENTER AMENDMENTS IMPROPERLY DENIED ENTRY**

Mail Stop AF-  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to a telephone conference with the Examiner on April 2, 2004, Applicant requests that PTO withdraw the improper first-action "final" rejection mailed December 2, 2003, and issue a new, non-final Office Action, which enters the claim amendments incorrectly denied entry and restarts the time period for response.

The subject application is a continued prosecution application (CPA), filed February 18, 2002. The CPA Transmittal (cover page) instructed: "Enter the unentered amendment previously filed on December 31, 2001 under 37 CFR 1.116 in the prior application." The "amendment previously filed had been denied entry for "rais[ing] new issues that would require further consideration and/or search" (Advisory Action mailed January 17, 2002, page 1). Making the first Office Action "Final" and not entering the amendment previously filed were improper because, in accordance with MPEP 706.07(b),

it would not be proper to make final a first Office Action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.

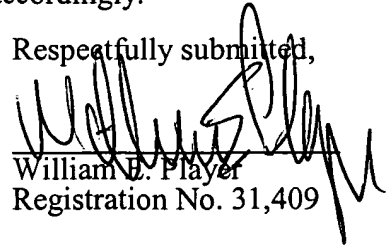
Favorable action is in order and requested, accordingly.

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Date: April 2, 2004

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Respectfully submitted,

By

  
William E. Flayer  
Registration No. 31,409